

No. 1-12-2751

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County
Plaintiff-Appellant,	)	
v.	)	Nos. 08 CR 6408
	)	08 CR 6411
NICHOLAS CHIAPPETTI,	)	08 CR 6827
	)	
Defendant-Appellee.	)	Honorable Lauren Gottainer Edidin
	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Justices Harris and Pierce concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The court did not err by granting defendant's postconviction petition and reducing his sentence by one year because defendant's right to due process was violated when he was sentenced to a three-year term of mandatory supervised release after having been advised during the plea hearing that the crime of which he was charged only carried a two-year term of mandatory supervised release.

¶ 2 The State appeals from an order of the circuit court of Cook County granting defendant Nicholas Chiappetti's petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) and reducing his sentence by one year. The State contends that the

circuit court erred by granting defendant's petition because the trial court substantially complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997) during the plea hearing when it advised defendant that he must serve a term of mandatory supervised release (MSR), but misstated the length of the MSR term. For the reasons that follow, we affirm.

¶ 3

### BACKGROUND

¶ 4 Defendant pleaded guilty to three counts of armed robbery pursuant to a negotiated plea agreement and was sentenced to three concurrent terms of 10 years' imprisonment and a three-year term of MSR. During the plea hearing, the court advised defendant as follows:

"THE COURT: Mr. Chiappetti, you are here today charged with armed robbery. Three counts?

DEFENDANT: Yes.

THE COURT: Each is a class X felony. As such, each carries six to 30 years in the state penitentiary plus a fine of up to \$50,000 and two years of mandatory supervised release. You understand what it is you are charged with and what it carries?

DEFENDANT: Yes.

THE COURT: Knowing what you are charged with and what it carries, how do you wish to plead, guilty or not guilty?

DEFENDANT: Guilty."

Defendant later filed a *pro se* petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) seeking a three-year reduction of his sentence and asserting that the

court had modified his sentence by adding three years of MSR to the end of the 10-year sentence he had negotiated with the State, and that motion was denied by the court.

¶ 5 Defendant, through counsel, filed a petition for postconviction relief in which he asserted that his right to due process was violated when he was sentenced to a three-year term of MSR after having been advised that the crimes to which he pleaded guilty carried a two-year term of MSR and requested that his 10-year sentences be reduced by one year as a result. The petition was not ruled upon within 90 days of its filing and was thereby advanced to the second stage of proceedings. The State then filed a motion to dismiss the petition. The court denied the motion, finding that defendant's right to due process had been violated because he did not receive the benefit of the bargain of his negotiated guilty plea and that a one-year reduction of his sentence was appropriate. Following a third-stage evidentiary hearing, the court granted defendant's petition and reduced his sentence by one year, stating that he had made a substantial showing of a constitutional violation because the record showed that he was sentenced to three years of MSR after having been advised that the crimes to which he pleaded guilty only carried a two-year term of MSR.

¶ 6 ANALYSIS

¶ 7 The Act provides a remedy for a defendant whose federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. *People v. Williams*, 209 Ill. 2d 227, 232 (2004). To be entitled to postconviction relief, a defendant must demonstrate that he suffered a substantial deprivation of his constitutional rights in the proceedings that produced the conviction or sentence being challenged. *People v. Caballero*, 228 Ill. 2d 79, 83 (2008). "The

Act provides a three-stage process for adjudicating postconviction petitions" (*People v. English*, 2013 IL 112890, ¶ 23), and in this case defendant's petition progressed to the third and final stage of proceedings. While a circuit court's decision following a third-stage evidentiary hearing is generally reviewed to determine whether it is manifestly erroneous, we will review the court's decision in this case under a *de novo* standard of review because no new evidence was presented at the third-stage hearing and the issue presented is a pure question of law. *People v. Beaman*, 229 Ill. 2d 56, 72 (2008).

¶ 8 Under Illinois Supreme Court Rule 402(a) (eff. July 1, 1997), the trial court is required to provide a criminal defendant with certain admonitions prior to accepting his guilty plea. Such admonitions are given to ensure that the plea is given knowingly and intelligently. *People v. Morris*, 236 Ill. 2d 345, 366 (2010). In *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005), our supreme court held that when a defendant pleads guilty to a crime pursuant to a negotiated plea agreement and will be subject to a term of MSR, the trial court's failure to advise the defendant that a MSR term will be added to his sentence pursuant to Rule 402(a) constitutes a violation of the defendant's right to due process. The court explained that "[the] addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing" and that "the addition of the MSR constitutes an unfair breach of the plea agreement." *Id.*

¶ 9 In this case, the trial court advised defendant prior to accepting his guilty plea that the sentence for armed robbery carried a two-year MSR term when, in fact, defendant was subject to a mandatory three-year term of MSR (730 ILCS 5/5-8-1(d)(1) (West 2006)). As such, when the

court sentenced defendant to three years of MSR, it imposed a sentence that was more onerous than the one defendant agreed to and thereby failed to comply with Rule 402(a). As such, the circuit court did not err when it determined that defendant's right to due process was violated when he was sentenced to a three-year term of MSR and reduced his sentence by one year.

¶ 10 In reaching that conclusion, we have considered *People v. Davis*, 403 Ill. App. 3d 461 (2010), and *People v. Marshall*, 381 Ill. App. 3d 724 (2008), cited by the State, and find them distinguishable from this case. In both *Davis*, 403 Ill. App. 3d at 465-66, and *Marshall*, 381 Ill. App. 3d at 735-36, this court held that the trial courts substantially complied with Rule 402(a) by advising the defendants during the plea hearings that they would have to serve a three-year MSR term if they pleaded guilty. In this case, however, the trial court never advised defendant that the sentence for armed robbery carried a three-year MSR term, as it instead admonished him that the sentence would include a two-year term of MSR.

¶ 11 CONCLUSION

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.